

Proposed Section 732.30(d)

[NOTE: Language in italics is language from the Act and also is the language in current Section 732.30(d) (Emergency Rule)]

- (d) *If the violation of a basic local exchange service quality standard is caused by a carrier other than the carrier providing retail service to the customer, the carrier providing retail service to the customer (for purposes of this subsection (d), the “retail carrier”) shall credit the customer as provided in this Section. The carrier causing the violation (for purposes of this subsection (d), the “wholesale carrier”) shall reimburse the carrier providing retail service the amount credited the customer. Such reimbursement by wholesale carrier to retail carrier shall be known as a Recourse Credit. When applicable, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer. If the wholesale carrier is providing service to the retail carrier pursuant to~~Unless~~ an interconnection agreement between the wholesale carrier and the retail carrier, the parties shall negotiate provisions to be added to the interconnection agreement contains provisions setting forth, with express reference to this subsection (d), the procedures by which the retail carrier is to request and receive a Recourse Credit~~reimbursement~~ from the wholesale carrier in accordance with this subsection. In the event that the wholesale carrier provides service to retail carrier without an interconnection agreement between the wholesale carrier and the retail carrier, the following procedures shall apply to ~~such reimbursements~~Recourse Credits. ~~—No interconnection agreement or amendment to an existing interconnection agreement shall be required to implement the provisions of this subsection (d).~~*

- 1) **Request for reimbursement.** The retail carrier shall submit a ~~report~~Recourse Credit Claim Form to the wholesale carrier by the 10th day of the month separately identifying all ~~compensation~~Customer eCredits~~made~~, paid or provided by the retail carrier to its customers in accordance with this Section during the preceding calendar month for which reimbursement is requested from the wholesale carrier. A wholesale carrier may devise a standard Recourse Credit Claim Form for use by all retail carriers. The ~~retail carrier’s report~~Recourse Credit Claim Form may also include requests for ~~reimbursement for compensation~~Recourse Credits for Customer Credits~~ed~~, paid or provided by the retail carrier to customers in prior months and not requested by the retail carrier in the Recourse Credit Claim Form~~report~~ for a prior month, provided, that the retail carrier shall have a maximum of ~~105~~90 days from the date that ~~compensation~~Customer Credit is ~~credited~~made, paid or provided by the retail carrier to its customer to request a Recourse Credit~~reimbursement~~. In cases in which Customer Credits were provided to the retail carrier’s

customer on multiple dates arising out of the same occurrence or related occurrences, the 90 day period shall run from the first date on which Customer Credits were provided to the customer. -Provided further, that the retail carrier shall have ~~105~~90 days from the effective date of this Section 732.30(d)(1) to request ~~reimbursement for~~Recourse Credits for Customer Credits~~compensation~~ paid to customers from August 1, 2001 to such effective date.~~-In cases in which compensation was provided to the retail carrier's customer on multiple dates arising out of the same occurrence or related occurrences, the 105 day period shall run from the most recent date on which compensation was provided to the customer.~~ By submitting a Recourse Credit Claim Form, the retail carrier represents and warrants to the wholesale carrier (i) at the time retail carrier submits such a Recourse Credit Claim Form, that the information contained within is a true and correct calculation of the credit claimed due to the retail carrier based on information known to the retail carrier and information received by the retail carrier from its customer and relied upon for substantiation under 83 IL Admin. Code Section 732.30, and (ii) that a credit in an amount that is not less than the one sought from wholesale carrier was actually made to retail carrier's end user associated with alleged violation of a Local Exchange Service Obligation. The ~~retail carrier's report~~Recourse Credit Claim Form shall include the following information with respect to each request for ~~reimbursement~~a Recourse Credit:

- A) Customer name and telephone number affected;
- B) The ~~specific basic Local eExchange Service Obligation~~service quality standard that was violated, i.e., failure to restore service within a time period required by this Part, failure to install service within a time period required by this Part, or failure to keep a scheduled repair or installation appointment where a customer premises visit requires a customer to be present;
- C) Brief statement as to how actions or inactions of the wholesale carrier, or failure or deficiency in any network element or service provided by the wholesale carrier to the retail carrier, caused the violation of the ~~basic Local eExchange sService Obligation quality standard~~ by the retail carrier; and
- D) Amount of ~~compensation~~Customer Credit credited~~made~~, paid or provided by the retail carrier to its customer (including the cost to the retail carrier of any alternative telephone service provided to the customer) for which ~~reimbursement~~Recourse Credit is requested, and the date or dates on which the ~~compensation~~Customer Credit was provided to customer; and

E) ~~Whether the retail carrier requests reimbursement from the wholesale carrier by invoice credit or by separate payment.~~

- 2) **Response to Requests for Reimbursement.** A) The wholesale carrier shall have ~~fourteen (14)~~thirty (30) calendar days after receipt of the ~~retail carrier's report~~Recourse Credit Claim Form to notify the retail carrier in writing if it disputes any of the requests for ~~reimbursement~~Recourse Credits. Such notice shall separately identify each request for ~~reimbursement of compensation to a customer~~Recourse Credit that is disputed, and the basis on which the wholesale carrier disputes the ~~reimbursement request~~t. Any request for ~~reimbursement~~Recourse Credit which is not disputed in writing by the wholesale carrier within the ~~fourteen~~thirty (30) calendar day period shall be ~~deemed agreed to~~reimbursed by the wholesale carrier, subject to wholesale carriers right to seek recovery of inappropriate credits under Section 732.30(d) 5. For each request for ~~reimbursement~~Recourse Credit that is timely disputed by the wholesale carrier, the parties shall use the dispute resolution process set forth in paragraph (3) below.

B) The wholesale carrier shall not be required to make, pay or otherwise provide any Recourse Credit unless retail carrier (i) is legally required to pay a Customer Credit to its customer under this Section and (ii) actually makes, pays or otherwise provides such Customer Credit. In no event shall any Recourse credit include any amount attributable to any liquidated damages or Consequential damages or any other damages that retail carrier may have paid its customer in excess of those Customer Credits expressly required by this Section. For purposes of this section, "Consequential Damages" shall mean indirect, special, consequential, incidental or punitive damages, including loss on anticipated profits or revenues or other economic loss in connection with or arising from anything said, omitted, or done hereunder. Wholesale carrier shall not be required to provide retail carrier with Recourse Credits if a violation of a Local Exchange Service Obligations resulted from one or more of the occurrences described in Section 732.30 (f). In the event that wholesale carrier is not the sole cause of a retail carrier's violation of a Local Exchange Service Obligation, the wholesale carrier shall only be required to make, pay, or otherwise provide a Recourse Credit that is reduced to reflect the wholesale carrier's percentage of fault. If the retail carrier and wholesale carrier cannot agree to the proper allocation of fault, the retail carrier and wholesale carrier shall resolve the issue by following the dispute resolution process set forth below.

- 3) **Dispute Resolution Process.** A) Within ten (10) business days following notice from the wholesale carrier that it disputes a request ~~for~~ ~~reimbursement~~Recourse Credit, the parties' designated contacts (subject

matter experts) shall engage in good faith settlement negotiation, in any mutually agreed-upon manner, to attempt to resolve the dispute.

B) If a resolution of a disputed request for ~~reimbursement~~Recourse Credit is not reached within thirty (30) calendar days from the date of notice of the dispute, the parties ~~shall~~ may jointly request voluntary mediation by the Commission pursuant to Section 10-101.1 of the Act. The Commission shall cause such voluntary mediation to be conducted expeditiously. At the request of a party or by direction of the Commission, any voluntary mediation may encompass multiple outstanding disputed requests for ~~reimbursement~~Recourse Credit.

C) At the conclusion of the voluntary mediation process, either party may ~~pursue any remedies available under the law, seek binding arbitration by the Commission pursuant to Section 10-101.1 of the Act. At the request of a party or by direction of the Commission, any binding arbitration may encompass multiple outstanding disputed requests for reimbursement. Any disputed request for reimbursement which it is determined through binding arbitration should be paid by the wholesale carrier shall also bear interest at the rate specified in the Uniform Penalty and Interest Act from the date on which the wholesale carrier issued its notice of dispute to the date of payment. If it is determined through binding arbitration that a disputed request for reimbursement should be paid by the wholesale carrier, the wholesale carrier shall be responsible for the costs of the binding arbitration, and the wholesale carrier may be ordered to reimburse the retail carrier for its attorney fees.~~

- 4) **Method of Reimbursement.** A) Any request for ~~reimbursement~~Recourse Credit which is not disputed by the wholesale carrier, ~~or which the wholesale carrier agrees to honor after settlement negotiations pursuant to subparagraph 3(A) or voluntary mediation pursuant to subparagraph 3(B), or which the wholesale carrier is ordered to pay after binding arbitration pursuant to subparagraph 3(C), shall be either paid to the retail carrier by separate payment within 21 calendar days, or~~ be credited to the retail carrier on the wholesale carrier's ~~next~~ invoice to the retail carrier for network elements or other services no later than the first billing date that is not less than thirty (30) Business Days after the wholesale carrier's receipt of the Recourse Credit Claim Form pursuant to Section 732.30 (d) (1). Any request for Recourse Credit which is disputed by the wholesale carrier shall not be required to be paid by the wholesale carrier until after the dispute has been resolved in accordance with subparagraphs 3(A) – 3(C). In such instances, if the dispute is resolved in retail carrier's favor, wholesale carrier shall provide a credit on wholesale carrier's invoice to retail carrier no later than the first billing date that is not less than thirty (30) Business Days after resolution of the

~~dispute. , depending on the method of reimbursement that was requested by the retail carrier.~~

B) Where ~~reimbursement~~**Recourse Credit** is to be ~~made~~**paid** by credit on the wholesale carrier's ~~next~~ invoice to the retail carrier, the invoice shall show separately the credit and the reason for it. ~~If the wholesale carrier fails to show such credit for reimbursement on the next invoice, the retail carrier may nevertheless deduct the amount of the credit in remitting payment of the invoice to the wholesale carrier. If such invoice is for less than the amount of reimbursement to be credited, the wholesale carrier shall, contemporaneous with issuance of the invoice, issue a check to the retail carrier for the amount of the reimbursement not able to be credited on the invoice.~~

5) **Obligation to Update Information.** A) If retail carrier becomes aware of any inaccuracy or omission in any information that it previously provided to wholesale carrier to substantiate Recourse Credit claims under Section 732.30 (d) (1), the retail carrier shall notify wholesale carrier of such inaccuracy or omission within five (5) Business Days of becoming aware of such inaccuracy or omission, including if such inaccuracy or omission arises from events subsequent to the submission, retail carrier shall notify wholesale carrier of such inaccuracy or omission within five (5) Business Days of becoming aware of such inaccuracy or omission, and do so on a per-Claim basis. If in light of such inaccuracy or omission, a Recourse Credit(s) made should not or would not have been made under this Appendix, (even if retail carrier provided a Customer Credit to its customer), the wholesale carrier may recover such inappropriate credits on wholesale carrier's invoice to retail carrier.

B) If the wholesale carrier denies a retail customer's request for Recourse Credit and becomes aware of any inaccuracy or omission, in whole or in part, in the facts that it relied upon for its decision for that denial, wholesale carrier shall notify retail carrier of such inaccuracy or omission within five (5) Business Days of becoming aware of such inaccuracy or omission on a per-Claim basis. If such inaccuracy or omission resulted in wholesale carrier failing to pay Recourse Credits, in whole or in part, to retail carrier that it otherwise should have paid, wholesale carrier shall provide a Recourse Credit on wholesale carrier's invoice to retail carrier no later than the first billing date that is not less than thirty (30) Business Days after it provides notice to retail carrier, as described above.